

APPEAL NO. 92076
FILED APRIL 3, 1992

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01 *et seq.* (Vernon Supp. 1992) (1989 Act). On January 21, 1992, a contested case hearing was held in _____, Texas, with (hearing officer) presiding as the hearing officer. The sole disputed issue before the hearing was whether or not appellant (claimant below) sustained "a work-related stroke on March 15, 1991, and/or on March 21, 1991, caused by mental stress traceable to a definite time, place and cause." The hearing officer determined that claimant wasn't entitled to benefits from carrier under the 1989 Act as a result of her stroke on March 15, 1991, and/or March 22, 1991.

DECISION

We affirm the decision of the hearing officer since his findings and conclusions are not against the great weight and preponderance of the evidence.

Claimant challenges the sufficiency of the evidence to support the following findings of fact and conclusions of law:

FINDINGS OF FACT

12. That the claimant was accustomed to the working conditions of her employer and the events of March 15, 1991 and March 22, 1991 were not of such nature as would create an unusual amount of stress related to the job.

13. That there is no medical or other evidence that the working conditions and events as existed on March 15, 1991 and March 22, 1991 were of such a nature as to cause the claimant to have a stroke.
14. That the stress and frustration experienced by the claimant on March 15, 1991 and March 22, 1991, did not cause her to have a stroke.

CONCLUSIONS OF LAW

3. That claimant has not proven by a preponderance of the evidence that the stroke on March 15, 1991 and/or March 22, 1991, was caused by mental stress related to her employment with [employer].
4. That the claimant is not entitled to any benefits under the Texas Workers' Compensation Act.

Claimant's basic contention at the contested case hearing below was that she suffered strokes on March 15, 1991, and on March 22, 1991, which were caused by the stress and strain of two events that occurred at work on those days. Carrier did not dispute that claimant had a stroke or strokes but contended that claimant failed to prove the strokes were caused by the two work-related events which claimant experienced on March 15th and March 22nd and to which she attributed her strokes.

The stressful event of March 15th involved claimant's inability to obtain the timely cooperation and assistance of her supervisor and coworkers in dealing with a problem with her computer printer. Apparently the problem involved the changing of the ribbon in the computer printer. The stressful event of March 22nd involved a fellow employee "yelling and screaming" at claimant on the telephone and another employee not talking to her when she had called employer's main office for information on the manner in which health insurance premiums would be deducted from her salary upon her enrollment.

Claimant testified that she had been employed by the (employer) for approximately 10 years. Apparently, she left this employment at sometime and when she resumed the employment in October 1989 she did not elect to purchase group health insurance coverage. On March 15, 1991, she was the sole employee at employer's branch office at nearby (location). Her daily duties included posting incoming mail, opening and closing various types of accounts, taking loan applications, posting payments, and otherwise assisting customers. She used a computer with a printer throughout the day to accomplish her tasks.

Claimant testified she was very busy on March 15th since it was a payday. At some time in the morning she experienced a printer malfunction apparently involving the ribbon. She called her supervisor at the main office, Ms. AB, for assistance. Ms. AB, who was about to leave for lunch, asked claimant to call Ms. PE. When claimant spoke with Ms. PE,

she screamed and yelled at claimant. Claimant testified that this call was made at approximately 1:00 p.m. Claimant later spoke to Ms. TR who was unable to talk her through the ribbon change on the telephone and who later came to claimant's office to help claimant fix the printer. Claimant was already "exhausted" from her workload on a heavy payday and the printer malfunction added to her stress as she had to write out receipts by hand. Claimant became very upset at what she perceived as a lack of cooperation and assistance from the main office in her effort to get her printer fixed. She said that although she didn't realize what had happened to her, after the conversation with Ms. PE, claimant "had a stroke" and experienced a bad headache, saw spots before her eyes, and felt light-headed, flushed, and hot. Claimant testified that she told Ms. TR, who later came from the main office to help change the printer ribbon, that she felt sick. Ms. TR testified that claimant said no such thing and "seemed fine" during the time she was with claimant that afternoon.

The stressful event of March 22nd occurred when claimant called the main office for information about the deduction for health insurance premiums. Earlier that morning she had picked up the forms at the main office to enroll in the health insurance program, completed and signed them, and had her husband return them to the main office that morning. Claimant testified that at approximately 10:30 a.m., she called the main office seeking the information and was told she needed to speak to Ms. JR. Claimant then heard Ms. JR in the background say that she didn't know what claimant was talking about and that claimant needed to talk to Ms. WB. This event upset claimant very much because she had spoken to Ms. WB on a prior occasion and again earlier that morning when claimant obtained the forms. She felt that Ms. JR was simply refusing to speak to her. After getting upset over this incident, claimant said she became very depressed and experienced a headache, blurred vision, tingling, weakness, and light-headedness--the symptoms she experienced on March 15th. At around 4:30 p.m., claimant's left arm and leg became numb, her left leg began to drag and her shoe fell off, she experienced a loss of feeling on her left side, and became dizzy. When her husband came to pick her up at the end of the day, he took her home and later to the (hospital) where she was admitted, diagnosed and treated for right stroke and hypertension, and discharged on March 30, 1991.

Claimant introduced a statement she gave to carrier's representative on April 2, 1991. In response to the question "tell me what happened to you," she recounted that "this happened at around closing time . . . at 5:00 p.m. . . . on the 22nd of March" She recounted that at that time she began to feel hot all over, her left arm went out on her and her left foot was dragging and she felt dizzy and walked back to her desk. She said her husband arrived to pick her up and that he took her home and she went to the hospital. When asked if she related her stroke to anything in particular at the workplace, she said she did get into at least two arguments that past week related to needing help with her printer and mentioned an argument with Ms. PE on the telephone about 1:00 p.m. Though not mentioned in this statement, claimant testified that the argument with Ms. PE occurred on March 15th. According to the statement of her supervisor, Ms. AB, claimant called her on March 15th at around 1:00 p.m. about the ribbon on the computer printer being jammed and

wrapped around the printing head. When she returned from lunch, Ms. AB called claimant who said Ms. PE hadn't been able to help her. After two other employees attempted to help claimant change the ribbon with advice over the telephone, one of them, Ms. TR, went to claimant's branch to change the ribbon. In Ms. PE's statement, she said she told claimant to look at the ribbon to see how it was put on the printer and then to put a new one on the same way. According to Ms. PE, claimant said she guessed that Ms. PE wasn't going to help her and hung up on her. Ms. PE then asked Ms. TR to see if she could help claimant. According to Ms. TR's statement she tried to talk claimant through the problem over the phone and then went to the branch office where she showed claimant how to change the ribbon. After installing the new ribbon the printer printed lower on receipts but was working. Ms. TR's statement said that while claimant had a lot of work, "she seemed fine to me." Ms. TR testified that she had previously worked at the location branch office and regarded the workload as "moderate to light" and, while the workload did increase on paydays, it was not more than what one person could handle. Ms. TR testified that claimant seemed fine and never mentioned being sick or feeling bad during the 30 minutes Ms. TR was there that afternoon.

According to the statement of Ms. WB, when she gave claimant the health insurance application and statement of insurability forms on the morning of March 22nd, claimant asked how her premiums would be deducted. Ms. WB advised her that she would need to check with Ms. JR about that. The statement of Ms. SJ indicated that on March 22nd, claimant called the main office at sometime between 4:00 p.m. and 4:30 p.m. asking to speak to Ms. JR. Ms. JR wasn't present then so Ms. SJ attempted to give claimant the information about the payroll deduction. During the conversation, Ms. JR walked in and Ms. SJ posed claimant's question to Ms. JR. Ms. JR told Ms. SJ that there was a waiting period for employees who didn't take the insurance at the time of employment, confirmed the payroll deduction information, and wondered aloud why Ms. WB had not given claimant that information. Ms. SJ asked that question of claimant who advised she hadn't been given that information from Ms. WB. Claimant then thanked Ms. SJ and hung up. In her statement, Ms. JR said she never refused to talk to claimant. Ms. JR said that claimant also asked Ms. SJ about the effective date of coverage and Ms. JR advised that there would be a waiting period of approximately six weeks. On March 22nd, she signed the statement of insurability which accompanied her group health insurance application and stated on the form that she was in good health and denied having any of the listed diseases including high blood pressure. Claimant testified that at the time she completed that form she wasn't expecting any medical problems. She also testified that her husband was unemployed in March 1991.

According to the medical records from the hospital, claimant was first examined at 9:05 p.m. on March 22nd and diagnosed as having had a right stroke and hypertension. Her blood pressure was initially 200/110, repeated at 160/102, and remained in the 160/90 range. The records described claimant as "obese" and as having had a weight gain of 50 to 60 pounds in the past few years. The records also reflected her smoking history of five cigarettes per day for the past two years and one pack per day for the previous 15 years.

These records contained the following history of claimant's stroke:

. . . acute left sided tingling and weakness the morning of 22 March 1991 upon awakening. This initially began with tingling on the left side including left upper extremity and left lower extremity and left face, associated with short term dizziness, described as light headiness and difficulty getting balance, lasting approximately thirty minutes to one hour. She noticed difficulty rolling hair, specifically lifting left arm and did drag left lower extremity throughout the day, only mildly with shoe falling off left foot. This tingling and mild weakness was stable throughout the day, noticed blurred vision intermittently throughout the day. Denies other visual changes. No loss of consciousness, no nausea, vomiting, no headaches. At the end of work, at approximately 5:15 p.m. she noticed another onset of progress weakness in the left lower extremity with difficulty raising off bed and difficulty raising left upper extremity from side. Has feeling of anxiety and uneasiness and was brought to the Emergency Room by her husband. . .

The hospital records contained no reference to the symptoms claimant testified she suffered on March 15th. Claimant testified she told someone at the hospital about her March 15th symptoms and insisted she didn't roll her hair. She was discharged on March 30th with a mild deficit in strength and sensory loss on the left extremities. She was to use a large-based cane and obtain physical and occupational therapy to regain her strength.

The evidence showed that carrier paid claimant temporary income benefits from March 22nd through May 3, 1991, and terminated claimant's benefits after concluding that claimant's injury had not arisen in the course and scope of her employment and that no causal relationship existed.

Claimant adduced the medical report of her expert, Dr. G, a neurologist, who first saw claimant on April 22, 1991. Dr. G's report contains a history which references claimant's getting angry and upset about the problem with her computer printer on March 15th and the problem on March 22nd about Ms. JR avoiding her. Dr. G's report refers to claimant as being "somewhat overweight" and mentions her smoking six to eight cigarettes per day. He said it was possible the major mechanism for claimant's stroke was "cerebrovasospasm" and that "[m]y feeling is that this patient had a stroke in association with a period of extreme stress. . . ."

Claimant also introduced a medical report from Dr. M, a neurologist, who, at the request of carrier, reviewed claimant's medical records including those from the hospital, Dr. G's notes of April 22nd and May 21st, and some of the imaging reports from the hospital and from Dr. G. Dr. M's report noted that claimant's records revealed that she had "a very slight decrease in her HDL fraction of her cholesterol, indicating a slight increased risk of atherosclerotic events, such as strokes, or heart attack, and she smoked one pack per day,

giving her a moderately increased risk for either of these illnesses. . . ." Dr. M also noted that an MR scan of claimant's brain revealed "two very small ganglionic infarcts of the lacunar type called subcortical infarcts" in the right side of her brain which would be consistent with her symptoms. He couldn't be sure whether both occurred at the same time or whether one may have occurred at the hospital. He stated that "[T]his type of stroke can occur in hypertensive patients who are uncontrolled. . . ." Claimant had testified she was unaware of her high blood pressure. Dr. M's opinion on the cause of claimant's stroke(s) is as follows:

In regard to the stroke, I differ in my opinion from [Dr. G], if he did state that the stroke was related to a period of extreme stress at work. Strokes do not arise out of stress, they arise out of atherosclerotic lesions either within the heart or the great vessels, or the small vessels of the brain. The risk factor for stroke are cigarette smoking, hypertension, obesity, diabetes, and cholesterol abnormalities. The patient had four of those five risk factors, and I believe that those were the cause of her stroke, and I am not of the opinion that stress would cause a stroke under any circumstances unless it was an extreme hypertension with secondary hemorrhage into the brain; this is not the type of stroke that [claimant] had. One cannot say that the stroke was aggravated by work since she went to work with the symptoms and it was after work that she noticed some worsening in the symptoms. I think that she erred of her own volition for not going to the hospital in the morning with her symptoms and possibly something could have been done to prevent the mild worsening that seems to have occurred in the afternoon. . . ."

In Texas Workers' Compensation Commission Appeal No. 91064, decided December 12, 1991, we recognized "that under the prior workers' compensation law, TEX. REV. CIV. STAT. ANN. arts. 8308 *et seq.* (repealed), heart attacks and strokes were reviewed and analyzed utilizing the same evidentiary standards. . . ." albeit that heart attacks are now specifically treated in Article 8308-4.15 (1989 Act). Several of the heart attack cases are instructive in considering the instant case. In Olson v. Hartford Accident and Indemnity Company, 477 S.W.2d 859 (Tex. 1972), the Texas Supreme Court stated that "[F]or there to be an accidental injury, or an industrial accident, there must be an undesigned, untoward event traceable to a definite time, place, and cause. . . ." This decision affirmed the court of civil appeals decision which stated that the incidents alleged to have caused the employee's heart attack "are no more than the usual differences and irritations - the stresses and strains - that are apparent in everyday living, as well as employment. . . ." Hartford Accident and Indemnity Company v. Olson, 466 S.W.2d 373, 376 (Tex. Civ. App.-El Paso 1971). See also Brown v. Texas Employers' Insurance Ass'n, 635 S.W.2d 415 (Tex. 1982) where the court affirmed the court of appeals decision (622 S.W.2d 608) which reversed a lower court judgment for plaintiff because of the insufficiency of the evidence that the deceased's fatal heart attack had been caused by work related stress.

A review of the Texas case law reveals that stroke can indeed amount to a compensable injury for workers' compensation benefits. The case of Mountain States Mutual Casualty Company v. Redd, 397 S.W.2d 321 (Tex. Civ. App.-Amarillo 1965, writ ref'd n.r.e.) involved an employee of a business which repaired motors who began to manifest symptoms while mounting a bracket on a motor. The employee died 20 days later from a brain hemorrhage secondary to a burst aneurysm. The manager testified that exertion was required for the job employee had been doing at the time. The treating physician testified that there was a relationship between the employee's work and the hemorrhage and that his work was a producing cause of the hemorrhage and death. No medical evidence to the contrary was offered. In its opinion affirming the jury's finding that the death resulted from a work-related injury, the court commented as follows:

It is well settled that a workman can recover compensation benefits if a job incident contributes to cause his incapacity or death. . . . It is also settled that compensation benefits are recoverable if the workman as a result of exertion or a strain on the job sustains hemorrhage, ruptures, or heart attacks notwithstanding the fact predisposing factors contributed to the incapacity or death. (citations omitted) *Id* at 323.

The court said that the question of whether the hemorrhage which led to the employee's death was "precipitated by a strain or exertion by the work being performed" was a fact question for the jury. In Texas Employers Ins. Ass'n v. Young, 231 S.W.2d 483 (Tex. Civ. App.-Texarkana 1950, no writ) the appellate court found the evidence of overexertion on the job insufficient as a producing cause of the cerebral hemorrhage which led to the death of an employee. The court cited the decision of a sister appellate court for the following proposition:

Where the evidence shows that a particular result may possibly have occurred by reason of several different causes, and it is not more reasonably probable that one of the causes was operative rather than the other, a finding of causal relationship between the result and a particular cause cannot be sustained. *Id* at 486.

See *also* Transport Ins. Co. v. Campbell, 582 S.W.2d 173 (Tex. Civ. App.-Houston [1st Dist.] 1979, writ ref'd n.r.e.) and Commercial Standard Insurance Company v. Curry, 460 S.W.2d 464 (Tex. Civ. App.-Houston [1st Dist.] 1970, writ ref'd n.r.e.) where the courts considered and affirmed jury findings that the evidence supported the causal relationships between on the job strain, exertion, or shock and subsequent strokes. In Campbell, *supra*, the medical evidence was found not to have been so adverse to the existence of causation as to overcome the weight of the circumstantial evidence.

In Aetna Insurance Company v. Hart, 315 S.W.2d 169 (Tex. Civ. App.-Houston 1958, writ ref'd n.r.e.), the court affirmed the jury's finding that a dry cleaner employee's stroke was causally related to her having been berated by an abusive customer. The court stated that

the employee's job subjected her to the risk of being berated by customers and that there had been an "undesigned, untoward event traceable to a definite time and place involving a risk of employment." The court stated that the "event" . . . must have been the producing cause of the stroke. . . . The medical evidence showed that the employee had "quite high" blood pressure (198/120) and the court went on to observe that "[S]peaking generally, an emotional stimulus will, in reasonable probability, cause a stroke in people having high blood pressure. Shock affects the blood pressure." *Id* at 175. A neurologist testified that "in reasonable probability the incident related by [employee] was the precipitating cause of her stroke . . . may well have been the precipitating factor of the stroke . . . was in reasonable probability the producing factor of the stroke." *Id* at 176. The Court noted the presence of the evidence of the employee's high blood pressure and obesity which the medical testimony related to susceptibility to stroke. The court concluded its discussion of the medical evidence by saying "it suffices to preclude the conclusion that the precipitating cause of the stroke was anything other than the emotional stimulus produced by the incident with the [customer]." *Id* at 177.

In the case *sub judice*, the hearing officer found that the events of March 15th and March 22nd related by claimant were not such as would create unusual stress and cause a stroke and that those events did not, in fact, cause claimant's strokes. We find the evidence supports the challenged findings and conclusions. Dr. G's report stated that claimant "had a stroke in association with a period of extreme stress" whereas Dr. M's report concluded that claimant's having four of the five risk factors caused her stroke, not stress.

It was for the hearing officer as the sole judge of the weight and credibility of the evidence to resolve the several conflicts in the evidence including whether claimant had a stroke on March 15th, whether claimant had a stroke on March 22nd at home before going to work, and whether claimant's stroke or strokes were caused or precipitated by the events at work which she testified so upset her. Article 8308-6.34(e) (1989 Act). We will not disturb the hearing officer's findings and conclusions unless they are so against the great weight and preponderance of the evidence as to be manifestly unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660, 662 (1951); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Joe Sebesta
Appeals Judge